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SIPDIS
STATE FOR ISN/CB (KRISTEN GASS) AND EUR/CE

E.O. 12958: DECL: 08/18/2033
TAGS: [PARM](#) [PINR](#) [ETTC](#) [CBW](#) [IN](#) [IR](#) [GM](#)
SUBJECT: (S) GERMANY TO WEIGH U.S. OBJECTIONS REGARDING
EXPORT OF AUSTRALIA GROUP LISTED ITEMS TO UNITED PHOSPHORUS
LTD

REF: A. BERLIN 973
[B](#). STATE 85368
[C](#). BERLIN 1096
[D](#). BERLIN 1103

Classified By: Global Affairs Unit Chief Don L. Brown for
reasons 1.4 (b) and (d).

[1](#). (S) Before deciding on a pending German export request of Australia Group (AG) listed items to the Indian firm United Phosphorus LTD (UPL), German export control authorities agreed to weigh U.S. concerns regarding the AG "no undercut policy." On Monday August 18, MFA Export Control Division Deputy Office Director, Markus Klinger, reiterated to EconOffs Germany's vulnerable legal position if Germany were to deny this export request given a lack of "well founded proliferation reasons" for denial. EconOffs stressed to Klinger the importance the U.S. places on maintaining a strict AG "no undercut policy" and reminded him of similar U.S. export denials to UPL on the grounds that the U.S. continues to regard UPL as an end-user posing significant proliferation risk.

[2](#). (S) Klinger hypothesized that if Germany were to deny this request and the German company were to challenge it in court, there would be a "very high risk" Germany would lose this legal case. In addition, Klinger commented about the evidence supplied in the Ref B nonpaper regarding a 2005 Iranian price inquiry into UPL nerve agent precursors, saying that even if this were the case, Germany would now have to prove that Iran has an active chemical weapons program - something that Germany has not seen evidence of.

[3](#). (S) Klinger explained that if an AG member intends to export an AG listed item, previously denied by another AG member, the "no undercut policy" only requires a consultation between the two AG participants - "an obligation that Germany has now met." However, Klinger stated that he would be sure to convey the U.S. concerns to the German interagency export controls working body before a final decision is levied.

COMMENT

[4](#). (S) The German responses in Refs C and D indicated that Germany was under the gun to make of decision on this case by August 15. Based on Klinger's comments, it now appears as though Germany is taking a more cautious approach on this decision than previously thought and would carefully consider the U.S. position before making a decision.
TIMKEN JR